

Panaji, 8th February, 1991 (Magha 19, 1912)

SERIES II No. 45



OFFICIAL GAZETTE

GOVERNMENT OF GOA

EXTRAORDINARY

No. 2

GOVERNMENT OF GOA

Legislature Department

Notification

No. LA/A/3043/1991

The following decision dated 7th February, 1991 of the Speaker of Legislative Assembly of State of Goa given under Rule 8(1)(a) of the Members of Goa Legislative Assembly (Disqualification on ground of Defection) Rules, 1986 framed under the Tenth Schedule of the Constitution of India is hereby notified and published.

"In the matter of Petition filed by Shri Vinayak Naik, MLA against Dr. Carmo Rafael Pegado, MLA for disqualification under the Tenth Schedule of the Constitution of India.

Order

By his petition dated 30-11-1990, Shri Vinayak Naik, MLA brought to my notice that the wording of the petition dated 28-3-1990 made before me by Dr. Carmo Rafael Pegado, MLA along with certain Congress Members against seven Congress Members who voluntarily gave up the Congress Party in April last year, showed that Dr. Carmo Rafael Pegado, who had been elected as an Independent candidate had joined the Congress Party and had hence incurred disqualification under the Tenth Schedule to the Constitution.

On receipt of the petition, I gave notice of the petition to Dr. Carmo Pegado and invited his comments as required by the rules.

Dr. Carmo Pegado submitted his comments dated 14-12-1990 wherein he denied the charge made by Shri Vinayak Naik, MLA.

I gave Dr. Carmo Pegado personal hearing on 5-2-1991. At the hearing he was represented by his Advocate, Shri Coelho Pereira.

It appears to me that Shri Coelho Pereira, Advocate had come only to confuse the issue and not to help either Dr. Carmo Pegado or me. It appeared that he had not understood the case of the petitioner at all. He wasted over an hour only demanding time to produce witnesses and in making irrelevant submissions.

I have gone through the petition and have heard the arguments made on behalf of the parties.

The short question is whether the opening sentence in the petition dated 28-3-1990 which reads as follows:

"1. Petitioners, undersigned are the Members of the Goa Legislative Assembly and, they were set up for the General Elections to the Goa Legislative Assembly, held recently, by the Indian National Congress."

and which has been signed by Dr. Carmo Pegado, makes out that he has joined the Congress (I) Party even though he was elected as an Independent.

The quoted sentence says that "they were set up for the General Elections to the Goa Legislative Assembly, held recently by the Indian National Congress."

Dr. Kashinath Jhalmi, MLA who appeared on behalf of Shri Vinayak Naik argued vehemently that Dr. Carmo Pegado not only signed that statement but by his actions has shown that he was a Member of Congress-I Party. According to him Dr. Carmo Pegado became a Minister in the Congress I Government. He also at all time voted with Congress and hence by his conduct and association with Congress he has shown that he was one of the Members of the Congress I Party. According to him that is how he has come to sign the quoted statement.

At the first flush the arguments of Dr. Kashinath Jhalmi look convincing. However it has to be noted that there is no prohibition for Independent Member to support another Party as an Independent Member. In such a case it becomes a Coalition and an Independent Member remains Independent. In such a Coalition the Independent Member can also be a Minister. Also when it is a Coalition all the Parties to the Coalition have to vote together. I therefore do not think that by being a Minister and voting with Congress Dr. Carmo Pegado can be said to have become a Member of Congress Party. Besides in the Petition it is not the case of Shri Vinayak Naik that Dr. Carmo Pegado has joined Congress by becoming a Minister and voting with them. Shri Vinayak Naik has only relied on the petition filed by Dr. Carmo Pegado and others dated 28-3-1990. I have therefore to see whether by what is stated in that petition there is reason to hold that Dr. Carmo Pegado has joined the Congress Party.

It is obvious that Dr. Carmo Pegado was not elected on Congress (I) ticket. That petition does not say that "we the MLAs belonging to the Congress (I) Party." If such a statement had been signed by Dr. Carmo Pegado one could say that there is *prima facie* evidence to say that Dr. Carmo Pegado has joined the Congress (I) Party and there would then be a case for him to deny that allegation and lead evidence.

In the present case it is quite clear that Dr. Carmo Pegado has signed a statement written out by MLAs who had stood on Congress (I) ticket, without either reading it or realising what has been written, because Dr. Carmo Pegado had stood as an Independent candidate.

By no stretch of imagination that statement can be interpreted to mean that Dr. Carmo Pegado has joined the Congress-I Party.

Dr. Carmo Pegado's learned Advocate however instead of advancing this simple and straight forward argument went on at a tangent, at time making remarks which could be treated as contempt of the House.

In fact the Advocate of Dr. Pegado made a statement which can be damaging to Hon. Member Dr. Carmo Pegado.

His worthy Advocate contended that the statement of Dr. Carmo Pegado made in the first paragraph of the petition dated 28-3-1990 can at the most be considered that Dr. Pegado has made a false statement and therefore he can be taken for it on a privilege or anything of that sort or may be treated as a statement made by oversight.

This statement does not do much credit to Dr. Carmo Pegado. It is not proper on the part of Member of the House to say that he has made a false statement and that he could be charged for contempt of the House for making it. However, I do not take that into consideration whilst deciding this petition.

I am clearly of the opinion that no case is made out that Dr. Carmo Pegado has joined the Congress (I) Party.

In the result, I dismiss the petition.

Dated: 7th February, 1991.

Sd/-

(SURENDRA V. SIRSAT)
SPEAKER

To:

- 1) Dr. Carmo Pegado, MLA.
- 2) Shri Vinayak Naik, MLA.
- 3) The Secretary, Chief Election Commission of India, New Delhi.
- 4) Chief Secretary, Government of Goa, Panaji.
- 5) Secretary to Governor of Goa.

Copy to:

The Chief Minister of Goa"

ASSEMBLY HALL

M. M. NAIK

PANAJI - GOA

Secretary to the Legislative

7TH FEBRUARY, 1991 Assembly of the State of Goa